

Chapter 594: STATE CONTRIBUTION TO OVERBOARD DISCHARGE REPLACEMENT PROJECTS

SUMMARY: This ~~chapter regulation~~ implements 38 M.R.S.A. § 411-A. The intent of this ~~chapter rule~~ is to clarify how the State contribution for replacement projects to eliminate overboard discharges required by 38 M.R.S.A. § 414-A ~~Subsection (1-B)~~ will be administered by the Department of Environmental Protection. ~~Replacement systems for year round residential overboard discharges (overboard discharges from human habitations which are occupied for more than 6 months in any calendar year) commercial overboard discharges (overboard discharges from a building used for purposes of trade, commerce, rent, non-profit organizational endeavor, or municipal or quasi-municipal government entity) and seasonal residential overboard discharges (overboard discharges from human habitations which are occupied for less than 6 months in any calendar year) are eligible to receive grants to eliminate the overboard discharge, subject to the availability of funds under 38 M.R.S.A. § 411.~~

1A. Definitions

- A. Applicant.** An "~~a~~Applicant" is a person, a municipality, a quasi-municipal organization, or ~~c~~County ~~c~~Commissioners acting on behalf of an unorganized township or plantation.
- B. Commercial ~~o~~Overboard ~~d~~Discharge.** A "~~c~~Commercial ~~o~~Overboard ~~d~~Discharge" means an overboard discharge from a building primarily used for the purposes of trade or commerce, a non-profit organizational endeavor, a municipal or quasi-municipal government purpose, or for renting for periods greater than six months in any year.
- C. Overboard ~~d~~Discharge.** An "~~o~~Overboard ~~d~~Discharge" is a discharge to the surface waters of the State of domestic pollutants not conveyed to and treated in municipal or quasi-municipal sewerage treatment facilities.
- D. Public ~~n~~Nuisance ~~c~~Condition.** A "~~p~~Public ~~n~~Nuisance ~~c~~Condition" means an existing overboard discharge to a receiving water that is:
- ~~(1)~~**1.** A Class GPA, A, or SA water;
 - ~~(2)~~**2.** A tributary to a class GPA water;
 - ~~(3)~~**3.** A water body with a drainage area of less than 10 square miles; or
 - ~~(4)~~**4.** A violation of ~~Title~~ 38 M.R.S.A. ~~Sections~~ §§ 464, 465, 465-A or 465-B.
- E. Seasonal ~~r~~Residential ~~o~~Overboard ~~d~~Discharge.** A "~~s~~Seasonal ~~r~~Residential ~~o~~Overboard ~~d~~Discharge" means an overboard discharge from a human habitation ~~which~~ that is ~~occupied for~~

~~less than 6 months in any calendar year, not defined as a "commercial overboard discharge" or "year-round overboard discharge".~~

F. Shellfish hHarvesting aAreas. A "~~s~~Shellfish ~~h~~Harvesting ~~a~~Area" is an area where shellfish, including any species of clams, quahogs, mussels and oysters are or may be located, including known productive areas; areas where shellfish may be found; habitat where it is reasonable to assume shellfish may be found in the future; and, areas where shellfish may be stored (wet storage), processed or cultivated, as determined by the Department of Marine Resources.

G. Year-round rResidential oOverboard dDischarge. A "~~y~~Year-round ~~r~~Residential ~~o~~Overboard ~~d~~Discharge" means an overboard discharge from a human habitation ~~which that~~ is continuously occupied ~~by the owner~~ for 6 months or more in any calendar year and is the ~~owner's~~ legal residence ~~for the purpose of voting and filing a State Tax Return. of the owner for State and Federal income tax purposes.~~

2B. Funding. Funding ~~will be~~ is in accordance with 38 M.R.S.A. § 411-A and subject to the availability of funds under 38 M.R.S.A. § 411. ~~The Department shall participate in the design, engineering and construction costs of the replacement system to eliminate an overboard discharge. A year round residential overboard discharge will receive 90% of the costs of a project; a commercial overboard discharge will receive 50% of the costs of a project; and a seasonal residential overboard discharge will receive 25% of the costs of a project.~~

3C. Priority. The ~~c~~Commissioner shall authorize grants according to the following priority.

A1. First priority. Elimination of discharges to shellfish harvesting areas and elimination of public nuisance conditions;

B2. Second priority. Reimbursement pursuant to 38 M.R.S.A. § 411-A(4) ~~Elimination of public nuisances ; and~~

C3. Third priority. Reimbursement for elimination of discharges that do not qualify for funding pursuant to Section 3(A) and Section 3(B) of this chapter ~~Reimbursement pursuant to 38 M.R.S.A. Section 411-A(4).~~

4D. Eligibility. Persons, municipal, quasi-municipal organizations and ~~c~~County ~~c~~Commissioners may be eligible to receive funds to eliminate overboard discharges that cannot be relicensed under 38 M.R.S.A. § 414-A(1-B). No projects will be eligible for funding until the ~~d~~Department of ~~Environmental Protection~~ reviews and approves the project. A pPersons who removed an overboard discharges between June 1, 1987, and September 30, 1989, or after September 30, 1989 according to plans and specifications approved by the commissioner in advance of construction but prior to the offering of a grant by the department, resulting in elimination of sources of contamination to shellfish areas or elimination of public nuisance conditions is shall be reimbursed subject to Section 2-B above.

5E. Application for Funds. An application is a written document from the project applicant. The document must include the number and type (year-round residential overboard discharge, seasonal residential overboard discharge or commercial overboard discharge) of sanitary systems involved.

- ~~1. An application is a written document from the project applicant. The document shall include the number and type (year round residential overboard discharge, seasonal residential overboard discharge or commercial overboard discharge) of sanitary systems involved.~~
- ~~2. Applications may be submitted at any time to:-~~

~~Department of Environmental Protection
Division of Engineering and Technical Assistance
Bureau of Land and Water Quality
17 State House Station
Augusta, Maine 04333-0017~~

- ~~—Applications received before January 31 of the year will be eligible to receive funds in the same calendar year.~~

6F. Use of grant State Funds

A1. Eligible costs. State funds may be used to pay for the following work and services:

- ~~(1)(a)~~ Design of the treatment and disposal system.
- ~~(2)(b)~~ Construction of the treatment and disposal system up to and including connections through the foundation wall, as necessary.
- ~~(3)(c)~~ Inspection of the system by a qualified person(s).
- ~~(4)(d)~~ Administrative services, ~~such as advertising costs and telephone bills~~ associated with the project.
- ~~(5)(e)~~ Reasonable abandonment costs of the overboard discharge system as determined by the Commissioner.

B2. Non-eligible costs. State funds may not be used for the following costs:

- ~~(1)(a)~~ Internal plumbing required to allow connection to a new treatment system.
- ~~(b) Plumbing permits, licensing fees and connection fees to municipal or quasi-municipal sewerage systems.~~
- ~~(2)(c)~~ Easement costs or, land acquisition costs ~~and deed registration fees.~~

~~(3)(d)~~ Excessive property restoration beyond a reasonable amount necessary to comply with the Maine Subsurface Wastewater Disposal Rules or and contract documents, ~~for standard DEP specification.~~

~~(4)(e)~~ Other unnecessary costs or excessive charges as determined by the ~~c~~Commissioner.

7G. Requirements for Inclusion in Program

A1. Eligible systems. Only replacement systems for buildings whose owners ~~that~~ are required to eliminate a licensed discharge to comply with 38 M.R.S.A. § 414-A (1-B) are eligible for funding.

B2. Non-eligible systems. Replacement systems are ineligible for funding in the following situations:

~~(1)(a)~~ A building that did not have a licensed overboard discharge prior to September 30, 1989.

~~(2)(b)~~ A building that is otherwise not in compliance with laws of the State or the municipality.

C3. Funding through the applicant. Individual systems may be funded through a municipal or quasi-municipal applicant, if and when the following requirements are met:

~~(1)(a)~~ The individual system meets the eligibility criteria of ~~SSubsection 7(A)G(1); and~~

~~(2)(b)~~ The owner of the individual system has submitted to the applicant: ~~—(1) a signed aAgreement fForm and (2) a signed Easement Form. This agreement must:~~

~~(i) Agreement Form. Applicant shall require a signed Agreement Form between the applicant and the owner for each individual system (DEP form "Own I"). This agreement shall:~~

~~(a)(AA)~~ Grant access to the site for design, construction and inspection of the required facilities;

~~(b)(BB)~~ Require payment of owner's share of project prior to work; and

~~(c)(CC)~~ State that the owner is responsible for maintenance and repair of any malfunction of the system.

~~(ii) Easement Form. Applicant shall require a signed Easement Form (DEP form "Easement") to be recorded at the Registry of Deeds. This easement grants applicant the right to access at all reasonable times to inspect and correct a malfunction should the owner fail to do so.~~

8H. Design of Treatment System. The applicant ~~must~~ shall secure the services of a qualified individual or consulting firm for a design. A licensed site evaluator may design subsurface wastewater disposal treatment systems up to 2,000 gallons per day (gpd) in size. A professional engineer is required to for designs and prepare cContract dDocuments for wastewater disposal systems in excess of 2,000 gpd. ~~The Short Form Contract shall be used for systems less than 2,000 gpd.~~

9I. Cost ~~q~~Quotations, ~~c~~Contract ~~a~~Awards and State ~~p~~Payments

A1. Bidding procedure. The applicant is required to solicit bids from area contractors using ~~DEP Short Form Contract for State Projects (See Subsection I(2))~~ contract documents ~~or for the project documents prepared by an engineer.~~ Sealed competitive bids are required for all contracts. An advertisement for bids ~~should~~ must be published in a local newspaper at least seven (7) days before bids are opened. The systems must ~~may~~ be bid as: follows.

~~(1)(a) Single, Individual Systems.~~ Separate contracts for single, individual systems will be drawn for each individual system, and the contract award will be a lump sum for each individual system; or

~~(2)(b) A Group of Individual Systems.~~ A single contract for a group of individual systems may be drawn for all individual systems. In this case, the basis of award will still be a lump sum for construction of ~~all~~ each individual system, ~~or~~

~~(c) Municipal Treatment Facilities.~~ ~~The basis of the contract award shall be stated in the Contract Documents.~~

B2. Contract documents. ~~A Short Form Contract for State Projects is a set of Contract Documents available from the Department used to bid contracts on individual treatment systems. A Long Form Contract is used for treatment systems that are owned by a municipal or quasi-municipal organization and serve groups of buildings. Contract Documents include: Contract documents must include forms such as the following and must be approved by the department.~~

~~(a) Instructions to Bidders;~~

~~(1)(b) Bid~~ pProposal form;

~~(2)(c) Contract~~ aAgreement;

~~(3)(d) Standard General~~ cConditions;

~~(4)(e) Construction~~ sSpecifications;

~~(5)(f) Construction~~ pPlans; and

(6) Change order form.

C3. Award of ~~C~~onstruction ~~C~~ontracts. The ~~a~~Applicant shall award construction contracts to the lowest bidder, provided that the contractors selected have demonstrated ability to perform this kind of work and will comply with all State laws and ~~"Standard General Conditions for Contract Work on DEP Projects"~~ the contract documents required by Section 9(B) of this chapter ~~available from the Department.~~

D4. State Payments. Payments for eligible costs up to the limit of funding are remitted to the applicant as they are incurred. A payment request consists of a letter and payment request form detailing the eligible expenses with documentation attached. Copies of design invoices, construction contracts, inspection invoices, advertisement invoices and change order statements are the usual documentation required for payment, however, the ~~D~~department may require additional documentation in particular cases if necessary to prove the appropriateness of payment.

10J. Inspection of ~~t~~Treatment ~~s~~System. All construction under grants pursuant to this ~~c~~Chapter ~~shall~~ must be inspected as follows:

A1. Engineered subsurface systems. For systems of wastewater flow greater than 2,000 gpd, the services of an on-site inspector hired by the consultant engineer are required.

B2. Non-engineered subsurface systems. For systems of wastewater flow less than 2,000 gpd, inspection by the local plumbing inspector, consulting engineer, site evaluator, or DEP project engineer are required.

AUTHORITY: 38 M.R.S.A. ~~Section~~ § 411-A

EFFECTIVE DATE: January 5, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

EFFECTIVE DATE OF AMENDMENT:

FISCAL IMPACT NOTE:

The proposed changes in this Rule will not impose any cost on municipalities and counties.